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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER.

J. PAUL ST. SURE,
[illegible],
Attorney for Petitioner.

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PAGE

Index

Page

Reference to Reports of Official Opinions in the Case 1

Statement On Basis of Jurisdiction 2

Statement of Evidence in the Case 8

Assignments of Error 10

Summary of Argument 11

Argument 17

Point I. The facts of the instant case distinguish it from the Labor Board cases (National Labor Relations Board v. Jones Laughlin Steel Corporation and companion cases) 17

Point II. There can be no such thing as burdening or obstrucing a commerce which has not begun, and where there is no antecedent movement in commerce of the raw materials, manufacture or processing of such materials are not commerce but are distinct therefrom, and the National Labor Relations Act does not apply to the labor disputes arising out of such manufacture and processing 21

Point III. The canning by petitioner of a small quantity of hominy imported from other states has no direct effect on interstate commerce 30

Point IV. The power of Congress to regulate labor disputes in a local industry cannot be made to depend on the intention of the producer to sell the product in interstate commerce, or the uncertain circumstance of whether he may so sell all or any part of such product 32

Point V. The designation of petitioner's product as "hot cargo" and the refusal to handle such product by other unions was an unlawful conspiracy and cannot be a basis for extending the powers of Congress over petitioner's local labor relations 38

Page

Point VI. The instant case is in no way comparable to the cases wherein this Court has upheld the right of Congress to regulate intrastate affairs because of their direct effects upon interstate commerce 41

Conclusion 48

Table of Authorities Cited

Pages

Addyston Pipe and Steel Company v. United States, 175 U. S. 211; 44 L. Ed. 136 ..... 16, 47

Anderson v. Ship Owners Assn., 272 U. S. 359; 71 L. Ed. 298 ..... 15, 39

Arkadelphia Milling Co. v. St. Louis S. W. R. Co., 249 U. S. 134; 63 L. Ed. 517 ..... 14, 34

Associated Press, The, v. National Labor Relations Board, 301 U. S. 103; 81 L. Ed. 953 ..... 8, 12

Atlantic Coast Line R. Co. v. Standard Oil Co., 275 U. S. 257; 72 L. Ed. 270 13

Baltimore & O. R. Co. v. Interstate Commerce Commission, 221 U. S. 612; 55 L. Ed. 878 ..... 16, 46

Bedford Cut Stone Company v. Journeymen S. C. Assn., 274 U. S. 37; 71 L. Ed. 916 ..... 15, 39, 40

Board of Trade v. Olsen, 262 U. S. 1; 67 L. Ed. 839 ..... 16, 44

Brown v. Maryland, 12 Wheat. 419; 6 L. Ed. 678 43

Carter v. Carter Coal Company, 298 U. S. 238; 80 L. Ed. 1160 ..... 12, 14, 23, 24, 34, 37, 41

Champlin Refining Co. v. Corporation Commission, 286 U. S. 210; 76 L. Ed. 1062 ..... 14, 33

Chassaniol v. Greenwood, 291 U. S. 584; 78 L. Ed. 1004 ..... 13, 14, 26, 34

Coe v. Errol, 116 U. S. 517; 29 L. Ed. 715 ..... 12, 26

Coronado Coal Co. v. United Mine Workers of America, 268 U. S. 295; 69 L. Ed. 963 ..... 15, 36, 39

Duplex Printing Press Company v. Deering, 254 U. S. 443; 65 L. Ed. 349 ..... 15, 39

East Ohio Gas Co. v. Tax Commission of Ohio, 283 U. S. 465; 75 L. Ed. 1171 ..... 13, 27, 31

Federal Compress and Warehouse Co. v. McLean, 291 U. S. 17; 78 L. Ed. 622 ..... 14, 33

Florida v. United States, 282 U. S. 194; 75 L. Ed. 291 ..... 15, 42

Pages

Heisler v. Thomas Colliery Company, 260 U. S. 245; 67 L. Ed. 237 ..... 13, 14, 27, 34, 36
Hill v. Wallace, 259 U. S. 44; 66 L. Ed. 822 ..... 16, 44
Houston E. & W. T. R. Co. v. United States, 234 U. S. 342; 58 L. Ed. 1341 ..... 15, 39, 42, 43

Industrial Association of San Francisco v. United States, 268 U. S. 64; 69 L. Ed. 849 ..... 13, 31

Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 346 ..... 13, 14, 26, 32, 36

Lehigh Valley R. Co. v. Commonwealth of Pennsylvania, 145 U. S. 192; 36 L. Ed. 672 ..... 13, 22, 25
Local 167 I. B. T. v. United States, 291 U. S. 293; 78 L. Ed. 804 ..... 15, 39
Lowe v. Lawlor, 208 U. S. 274; 52 L. Ed. 488 ..... 15, 39

McCall v. People of the State of California, 136 U. S. 104; 34 L. Ed. 391 43
Mondou v. New York, N. H. & H. R. Co., (Second Employers' Liability Cases), 223 U. S. 1; 56 L. Ed. 327 ..... 16, 46

National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc., 301 U. S. 1-103; 81 L. Ed. 893 ..... 8, 12, 18
National Labor Relations Board v. Fruehauf Trailer Co., 301 U. S. 1; 81 L. Ed. 893 ..... 8, 12, 18, 20, 44
National Labor Relations Board v. Jones Laughlin Steel Corporation, 301 U. S. 1; 81 L. Ed. 893 ..... 8, 12, 17, 19, 44
National Labor Relations Board v. Santa Cruz Fruit Packing Company, 1 N. L. R. B. 454 ..... 1, 7

Oliver Mining Company v. Lord, 262 U. S. 172; 67 L. Ed. 929 ..... 13, 14, 26, 34

Public Utilities Commission v. Landon, 249 U. S. 236; 63 L. Ed. 577 ..... 13, 31

Railroad Commission v. Chicago B. & Q. R. Co., 257 U. S. 563; 66 L. Ed. 371 ..... 15, 42, 43

Pages

Santa Cruz Fruit Packing Company v. National Labor Relations Board, 91 Fed.(2d) 790 ..... 1, 8, 24
A. L. A. Schecter Poultry Corp. v. United States, 295 U. S. 495; 79 L. Ed. 1570 ..... 12, 13, 19, 23, 30
Simpson v. Shephard, 230 U. S. 352; 57 L. Ed. 1511 36
Southern R. Co. v. United States, 222 U. S. 20; 56 L. Ed. 72 ..... 16, 45
Stafford v. Wallace, 258 U. S. 495; 66 L. Ed. 735 ..... 16, 44
Standard Oil Co. of N. J. v. United States, 221 U. S. 1; 55 L. Ed. 619 ..... 16, 47
Swift and Company v. United States, 196 U. S. 375; 49 L. Ed. 518 ..... 16, 44

Tagg Bros. & Moorehead v. United States, 280 U. S. 420; 74 L. Ed. 524 ..... 16, 45
Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 U. S. 548; 74 L. Ed. 1034 ..... 16, 46

United Leather Workers International Union v. Herkert & M. Trunk Company, 265 U. S. 457; 68 L. Ed. 1104 32
United States v. American Tobacco Company, 221 U. S. 106; 55 L. Ed. 663 ..... 16, 47
Utah Power & Light Company v. Pfost, 286 U. S. 165; 76 L. Ed. 1038 ..... 13, 27, 28

Veazie v. Moor, 14 How. 568; 14 L. Ed. 545 ..... 12, 25
Virginia R. Co. v. System Federation No. 40, 300 U. S. 515; 81 L. Ed. 789 ..... 16, 46

Washington, Virginia & Maryland Coach Company v. National Labor Relations Board, 301 U. S. 142; 81 L. Ed. 965 ..... 8, 12

STATUTES CITED

Pages

Constitution of the United States, Art. I, Section 8(3) 11

General Rules of the Supreme Court, Rule 12 2

Judicial Code, Section 240a (U. S. C. Title 28, Section 347a) 2

National Labor Relations Act (C. 372; 49 Stat. 449) 2
Section 2 (6, 7); Section 7; Section 8 (1, 3); Section 10 (a), (c), (e) 2

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER.

OFFICIAL OPINIONS IN THE CASE.

The first reported opinion is that of the National Labor Relations Board, which opinion, including findings of fact, conclusions of law and final order thereon, is reported in 1 N. L. R. B. 454.

The next opinion is that of the United States Circuit Court of Appeals for the Ninth Circuit, which opinion is reported in Vol. 91 Fed.(2d) 790.

STATEMENT OF BASIS OF JURISDICTION.

Pursuant to Rule 12 of the General Rules of the Supreme Court, petitioner files this, its statement of the basis upon which it claims that the Supreme Court of the United States has jurisdiction upon certiorari to review the decision of the United States Circuit Court of Appeals for the Ninth Circuit.

(a) The statutory provisions which sustain the jurisdiction of the Supreme Court are Section 240a of the Judicial Code as amended by Act of February 13, 1925, also known as U. S. C. Title 28, Section 347a, and Section 10(e) of the National Labor Relations Act, Act of July 5, 1935 (c. 372, 49 Stat. 449).

(b) The statute of the United States, the interpretation and the validity of which as interpreted by the National Labor Relations Board and by the United States Circuit Court of Appeals for the Ninth Circuit is involved, is the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449) which act is printed in full in the Appendix to Petition for Certiorari filed herein. The parts of said act, the interpretation, application and validity of which are involved are subdivisions (6) and (7) of Section 2, Section 7, subdivisions (1) and (3) of Section 8 and subdivisions (a) and (c) of Section 10. It is claimed by petitioners that as applied to petitioner's business of processing, canning, labeling, packing, storing and loading entirely in California, of fruit and vegetables produced in California and as applied to the small quantity of such vegetables produced elsewhere than

n California but which has come to rest in California efore the processing thereof entirely for a local ustomer takes place are local activities and are not ithin the regulatory power conferred on Congress y the Commerce Clause of the Constitution of the Jnited States and not within the jurisdiction intended o be conferred on the National Labor Relations Board by said Act. The parts of said Act involved erein are the following:

"Definitions. Sec. 2. When used in this Act—

(6) The term 'commerce' means trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia or any Territory of the United States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The Term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"Right of employees. Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own

choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"Unfair Labor practices. Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

"Prevention of Unfair labor practices. Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may

be established by agreement, code, law, or otherwise.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from any such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practices, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint."

On November 2, 1935 the National Labor Relations Board, hereinafter called the "Board", acting through the Regional Director for the Twentieth Region, filed its complaint charging petitioner with an unfair labor practice affecting commerce, within the meaning of Section 8, subdivisions (1) and (3) and Section (2), subdivisions (6) and (7) of the National Labor Re-

lations Act by reason of the discharge by petitioner of thirty-one of its employees.

On November 8, 1935, petitioner herein, as respondent therein, filed its answer to said complaint denying that any of the acts alleged in said complaint or any other acts by petitioner or its business constituted interstate commerce or affect such commerce within the meaning of said Act. A hearing was held before a trial examiner beginning on December 23, 1935 and continuing with adjournments to January 6, 1936. At the opening of such hearing petitioner objected to the jurisdiction of the Board on Constitutional grounds. Again at the close of such hearing petitioner moved for a dismissal of the case on the ground that the evidence in the record affirmatively established that petitioner is not engaged in interstate or foreign commerce and that the labor dispute in question affected only the production of petitioner's product before commerce therein began.

On April 2, 1936, the Board rendered and filed its decision including its findings of fact, conclusions of law, and order (R. 55-84) wherein it decided that petitioner's business "constitutes a continuous flow of trade, traffic and commerce among the several states and with foreign countries" and that, "By (such) discrimination in regard to hire and tenure of employment and terms and conditions of employment respondent (petitioner) interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" and ordered petitioner to cease and desist from (1) discouraging

membership in the Union; (2) discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining such Union and (3) in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization and further ordered petitioner to reinstate said discharged employees to their former positions without prejudice to any rights previously enjoyed by them and to pay each of such employees a sum of money equal to that which he would normally have earned subsequent to such discharge less the amount each has earned prior to petitioner's offer of reinstatement and to post notices that in the future petitioner will cease and desist as aforesaid.

On January 12, 1937, the Board petitioned the United States Circuit Court of Appeals for the Ninth Circuit for an order enforcing the aforesaid order (R. 93) and on July 31, 1937 said Circuit Court rendered and filed its decision (R. 138) modifying the Board's decision as to petitioner's Seabright Plant on the ground that all of the products of said plant were sold in California and as thus modified, affirmed and ordered enforced the decision and order of the Board.

On October 28, 1937, petitioner filed in this court its petition for certiorari to review the decision of the Circuit Court of Appeals for the Ninth Circuit and on November 4, 1937 petitioner filed herein proof of service of said petition. This court granted certiorari on December 6, 1937.

If there be any question of jurisdiction here (and petitioner submits there is none) petitioner respectfully refers the Court to the following cases:

National Labor Relations Board v. Jones & Laughlin Steel Corporation, (No. 419);

National Labor Relations Board v. Fruehauf Trailer Company, (Nos. 420, 421);

National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc., (Nos. 422, 423), 301 U. S. 1-103, 81 L. Ed. 893;

The Associated Press v. National Labor Relations Board, 301 U. S. 103; 81 L. Ed. 953;

Washington, Virginia & Maryland Coach Company v. National Labor Relations Board, 301 U. S. 142; 81 L. Ed. 965.

STATEMENT OF THE CASE.

The Santa Cruz Packing Company is a California corporation owning and operating packing plants at Seabright, California and Oakland, California wherein it processes, cans, labels, packs and stores fruit and vegetables which it sells in the open market. It does not maintain or operate any canneries, warehouses, sales offices, or representatives in any other state. With the exception of a small quantity of hominy which it cans for Stokely Bros., an Indiana Corporation operating a warehouse in Oakland, California, and which hominy is resold only to local trade in California (R. 689-690), all of such fruit and vegetables are produced solely within the State of California. Its 1935 pack,

including a small carry-over from the previous year, was slightly less than 1,700,000 cases. Approximately thirty-nine per cent of this pack was sold to purchasers outside California, the sales being either f. o. b. or c. i. f. San Francisco-Bay Point contracts.

The Circuit Court of Appeals found that no shipments in interstate commerce were made by petitioner from its Seabright Plant and modified the orders of the Board so that they are to apply only to the employees of the Oakland Plant.

In conjunction with the cannery at Oakland and as an integral part of the establishment, petitioner maintained a warehouse where the canned goods after being labeled were packed and stored ready for shipment (R. 152-153). The labor practices investigated by the Board involved employees in this warehouse whose duties were to label the cans, pack and store them ready for shipment and assist in loading them on the carrier as orders were received. They helped load trucks or freight cars some of which had destination out of California. As a result of the labor practices picket lines were established at the cannery; the goods were declared "hot cargo" and other unions refused to handle them. As to these practices the Board found (R. 76):

> "The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned foods from the cars prior to their unloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members

> of the sister union, I. L. A. 38-79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move 'hot' Santa Cruz cargo were those members of the Sailors who comprised the crews of steam schooners and whose duties include the handling of cargo."

The refusal of the other unions to handle petitioner's goods was a violation of the award made in October, 1934, by Judge Sloss acting as Federal Arbiter following the San Francisco maritime strike of that year (R. 196-197).

On these facts the Board held that petitioner's labor practices affected interstate and foreign commerce and the Circuit Court of Appeals after modifying the Board's order as aforesaid affirmed said order and ordered it enforced on the ground that the labor dispute in question interfered with the commerce in thirty-nine per cent of petitioner's product intended for interstate commerce and therefore such practices prevented said part of petitioner's product from entering that commerce.

ASSIGNMENT OF ERRORS.

The Circuit Court of Appeal erred:

(1) In holding and deciding that the labor relations between petitioner and its employees engaged in processing, canning, labeling, packing, storing and

loading entirely in the State of California fruit and vegetables grown entirely in said state, except for a small quantity of hominy produced outside of California and which is sold entirely to a local dealer for resale in California, are subject to the regulatory provisions of the National Labor Relations Act.

(2) In holding and deciding that because 39 per cent of petitioner's product ultimately enters into interstate and foreign commerce its labor relations affecting only its production business before commerce in any of such products begins are subject to the regulatory powers of Congress under the Commerce Clause (Subdiv. 3 of Sec. 8 of Art. I) of the Constitution of the United States and within the jurisdiction of the National Labor Relations Board under the National Labor Relations Act.

(3) In holding and deciding that the alleged unfair labor practices had a direct and immediate effect on interstate and foreign commerce.

(4) In ordering petitioner to cease and desist from the labor practices therein complained of.

(5) In ordering petitioner to reinstate with back pay the thirty-one former employees named therein.

SUMMARY OF ARGUMENT.

I.

As the National Labor Relations Act contemplates the exercise of control over commerce by the Federal Government within Constitutional bounds it does not confer on the Board jurisdiction over any matters

which are not "in commerce" or which do not burden or obstruct commerce.

National Labor Relations Board v. Jones Laughlin Steel Corporation, 301 U. S. 1; 81 L. Ed. 893;

National Labor Relations Board v. Fruehauf Trailer Company, 301 U. S. 1; 81 L. Ed. 893;

National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc., 301 U. S. 1; 81 L. Ed. 893;

The Associated Press v. National Labor Relations Board, 301 U. S. 103; 81 L. Ed. 953;

Washington, Virginia & Maryland Coach Company v. National Labor Relations Board, 301 U. S. 142; 81 L. Ed. 965.

II.

Where there has been no antecedent movement of the raw products in commerce the business of canning, labeling, packing, storing and loading of fruit and vegetables produced wholly in California is not "in commerce" and a labor dispute therein cannot burden or obstruct a commerce which has not begun, therefore the National Labor Relations Act does not apply to such dispute and the Board had no jurisdiction over petitioner or its employees.

Carter v. Carter Coal Company, 298 U. S. 238; 80 L. Ed. 1160;

A. L. A. Schecter Poultry Corp. v. United States, 295 U. S. 495; 79 L. Ed. 1570;

Veazie v. Moor, 14 How. 568; 14 L. Ed. 545;

Coe v. Errol, 116 U. S. 517; 29 L. Ed. 715;

Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 346;
Chassaniol v. Greenwood, 291 U. S. 584; 78 L. Ed. 1004;
Heisler v. Thomas Colliery Company, 260 U. S. 245; 67 L. Ed. 237;
Oliver Mining Company v. Lord, 262 U. S. 172; 67 L. Ed. 929;
Utah Power and Light Company v. Pfost, 286 U. S. 165; 76 L. Ed. 1038;
Lehigh Valley R. Co. v. Commonwealth of Pennsylvania, 145 U. S. 192; 36 L. Ed. 672.

III.

Where small quantities of a raw product are shipped into the state for canning and sale to local trade in California, the National Labor Relations Act does not apply for the reason that commerce in such product has ended and the canning and subsequent handling are local affairs and labor disputes in such affairs do not directly burden or obstruct commerce.

A. L. A. Schecter Poultry Corp. v. United States, supra;
East Ohio Gas Company v. Tax Commission of Ohio, 283 U. S. 465; 75 L. Ed. 1171;
Public Utilities Commission v. Landon, 249 U. S. 236; 63 L. Ed. 577;
Atlantic Coast Line R. Co. v. Standard Oil Co., 275 U. S. 257; 72 L. Ed. 270;
Industrial Association of San Francisco v. United States, 268 U. S. 64; 69 L. Ed. 849.

IV.

Unless this court is willing to go so far as to say that the power of Congress extends over all labor disputes involving production industries, the Board did not have jurisdiction in the instant case for the reason that the Constitutional power of Congress cannot be made to depend on the intention of the producer to sell its product in interstate or foreign commerce or the fortuitous circumstance that it may ultimately sell a part of such product outside the state wherein it is produced.

Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 346;
Champlin Refining Co. v. Corporation Commission, 286 U. S. 210; 76 L. Ed. 1062;
Federal Compress and W. Co. v. McLean, 291 U. S. 17; 78 L. Ed. 622;
Oliver Mining Company v. Lord, supra;
Chassaniol v. Greenwood, supra;
Heisler v. Thomas Colliery Company, supra;
Arkadelphia Milling Company v. St. Louis S. W. R. Co., 249 U. S. 134;
Carter v. Carter Coal Company, supra.

V.

The designation of petitioner's produce as "hot cargo" by the International Longshoremen's Association and the refusal of such association to handle such product was an unlawful conspiracy in violation of the Federal Anti-Trust Act and a violation of the Sloss Arbitration Award and any burden or obstruction to commerce resulting therefrom is indirect and remote and does not extend the power of Congress or

the jurisdiction of the Board over petitioner's production business.

Bedford Cut Stone Company v. Journeymen S. C. Association, 274 U. S. 37, 71 L. Ed. 916;
Duplex Printing Press Company v. Deering, 254 U. S. 443; 65 L. Ed. 349;
Coronado Coal Company v. United Mine Workers of America, 268 U. S. 295; 69 L. Ed. 963;
Lowe v. Lawlor, 208 U. S. 274; 52 L. Ed. 488;
Anderson v. Ship Owners Assn., 272 U. S. 359; 71 L. Ed. 298;
Local 167 I. B. T. v. United States, 291 U. S. 293; 78 L. Ed. 804.

VI.

The instant case is not in any respect comparable to the cases wherein this court had held that by reason of the effects or burdens on interstate commerce the power of Congress extends to the regulation of intrastate affairs.

Rate Cases

Houston E. & W. T. R. Co. v. United States, 234 U. S. 342; 58 L. Ed. 1341;
Florida v. United States, 282 U. S. 194; 75 L. Ed. 291;
Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563; 66 L. Ed. 371.

Board of Trade and Stockyards Cases

Board of Trade v. Olsen, 262 U. S. 1; 67 L. Ed. 839;

Hill v. Wallace, 259 U. S. 44; 66 L. Ed. 822;

Swift and Company v. United States, 196 U. S. 375; 49 L. Ed. 518;

Stafford v. Wallace, 258 U. S. 495; 66 L. Ed. 735;

Tagg Bros. & Moorehead v. United States, 280 U. S. 420; 74 L. Ed. 524.

Railway Appliance, Employers' Liability, and Railway Labor Cases

Southern R. Co. v. United States, 222 U. S. 20; 56 L. Ed. 72;

Baltimore & O. R. Co. v. Interstate Commerce Commission, 221 U. S. 612; 55 L. Ed. 878;

Mondou v. New York, N. H. & H. R. Co., (Second Employers' Liability Cases) 223 U. S. 1; 56 L. Ed. 327;

Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 U. S. 548; 74 L. Ed. 1034;

Virginia R. Co. v. System Federation No. 40, 300 U. S. 515; 81 L. Ed. 789.

Anti-Trust Cases

Standard Oil Co. of N. J. v. United States, 221 U. S. 1; 55 L. Ed. 619;

United States v. American Tobacco Company, 221 U. S. 106; 55 L. Ed. 663;

Addyston Pipe and Steel Company v. United States, 175 U. S. 211; 44 L. Ed. 136.

ARGUMENT.

I.

THE FACTS OF THE INSTANT CASE DISTINGUISH IT FROM THE LABOR BOARD CASES (NATIONAL LABOR RELATIONS BOARD v. JONES LAUGHLIN STEEL CORPORATION, 301 U. S. 1 AND COMPANION CASES.

In the *Jones Laughlin* case, while the manufacturing was done entirely in Pennsylvania, the company owned coal and limestone mines and quarries in other states. It owned iron mines in Michigan. It owned lake and river transportation facilities and terminal railroads. It operated steamships on the Great Lakes. It owned warehouses in various cities in other states. It owned steel fabricating plants in Long Island City, New York and in New Orleans. It operated stores and warehouses in states other than Pennsylvania for the distribution of equipment and supplies for drilling and operating oil and gas wells and for pipe lines and refineries and pumping stations. It had sales offices in twenty cities throughout the United States and Canada. Approximately seventy-five per cent of its product was shipped out of Pennsylvania. It drew its raw materials from Michigan, Minnesota, West Virginia and Pennsylvania. In reference to such far-flung activities this court said:

> "When industries organize themselves on a national scale, making their relations to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of an industrial war."

In the *Fruehauf Trailer* case, the company imported from Ohio, Illinois, Indiana and other states more than fifty per cent of the raw materials used in its plant in Detroit. It maintained thirty-one branch sales offices in twelve different states and had dealers and distributors in all the principal cities of the United States. More than eighty per cent of its sales were of products shipped outside the State of Michigan.

In the *Friedman* case, the company imported from outside the State of Virginia 99.57 per cent of the raw material which it used in the manufacture of clothing and 82.8 per cent of its finished product was sold to customers outside of the State of Virginia. It maintained its own sales office and show room in New York City.

In each of said cases the companies were actually engaged in business in states other than the state wherein the labor dispute arose. In each there was an antecedent importation of raw material. In each instance manufacture was followed by sales in other states where each company was as much engaged in business as in the state where the manufacturing was done. The companies, as this court found, were truly organized on a national scale and this court merely refused to close its eyes to the obvious fact that the importation of raw materials, their manufacture or fabrication, and their subsequent sale was in each case a single business and not several independent businesses. In the instant case, the fruit and vegetables, with the exception of a small quantity of hominy, are

produced entirely in California. There is no antecedent movement of such materials in commerce. There is no subsequent handling of the product in other states by petitioner. All sales are made in California. Petitioner maintains no sales agencies, warehouses or distribution depots elsewhere. We submit the instant case is in no way comparable to any of the foregoing cases. Here manufacture precedes commerce and is not a part thereof. As this court said in the *Jones Laughlin Steel Corporation* case:

> "The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the Commerce Clause itself establishes, between commerce 'among the several states' and the internal concerns of the state. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system."

As to the small quantity of hominy imported from outside California for processing and sale to local trade commerce therein is at an end and the goods have come to rest so that the labor dispute operated only on a local activity.

> *A. L. A. Schecter Poultry Corp. v. United States,* 295 U. S. 495; 79 L. Ed. 1570.

The National Labor Relations Act defines the term "affecting commerce" (Sec. 2(7)) as follows:

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or ob-

structing commerce or the free flow of commerce."

As to this definition, the court in the *Jones Laughlin Steel Corporation* case said:

> "This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds."

We submit that the constitutional bounds which this court must determine in the instant case, do not include petitioner's business of canning, labeling, storing and loading of fruit and vegetables grown only in California or the processing of the small quantity of hominy imported from other states for sale only in the local markets. We submit, the instant case is not within the principles announced in any of the labor board cases cited but on the contrary is the very antithesis of such cases.

II.

THERE CAN BE NO SUCH THING AS BURDENING OR OBSTRUCTING A COMMERCE WHICH HAS NOT BEGUN AND WHERE THERE IS NO ANTECEDENT MOVEMENT IN COMMERCE OF THE RAW MATERIALS, MANUFACTURE OR PROCESSING OF SUCH MATERIALS ARE NOT COMMERCE BUT ARE DISTINCT THEREFROM AND THE NATIONAL LABOR RELATIONS ACT DOES NOT APPLY TO LABOR DISPUTES ARISING OUT OF SUCH MANUFACTURE AND PROCESSING.

The commonly accepted definition of the verb "burden" is "to encumber; to lay a heavy load upon; to oppress with anything; to oppress or to overload." The definition of the verb "obstruct" is "to block up; to stop up or close, as a way; to place an obstacle in or to fill with obstacles or impediments to passing; to impede, hinder or retard."

The basis upon which the Circuit Court of Appeals upheld the power of Congress and the jurisdiction of the Board in the instant case is that the labor dispute in question interfered with the labeling, packing, storing and loading of petitioner's product and caused other unions to designate petitioner's product as "hot cargo" and to refuse to handle such product thereby preventing the thirty-nine per cent of such product ultimately destined for sale in interstate commerce from reaching such destination and therefore interstate traffic in such products was throttled at its source. The court said:

> "We therefore hold that the Constitution granted to the Congress the power to regulate respondent's labor relations with reference to all

> of its employees at its Oakland plant engaged in the production of canned and packed fruit and vegetables, the processing of 39% of which was intended for interstate commerce and had been throttled for a considerable period from entering that commerce, although the remaining 61% remain within the state of production."

We submit that it is entirely impossible to burden or obstruct something which is not in existence, which has not yet commenced. While the labor disputes in petitioner's plants might diminish or reduce the volume of goods "to be" transported in interstate commerce as found by the court below, such effects are indirect and remote and do not come within the powers of Congress under the commerce clause.

In the case of *Lehigh Valley R. Co. v. Commonwealth of Pennsylvania,* 145 U. S. 192, 26 L. Ed. 672, the court said:

> "And while interstate commerce cannot be regulated by a State by the laying of taxes thereon, in any form, yet whenever the subject of taxation can be separated so that that which arises from interstate commerce can be distinguished from that which arises from commerce wholly within the state, the distinction will be acted upon by the Courts, and the State permitted to collect that arising upon commerce solely within its own territory. *Ratterman v. Western U. Teleg. Co.,* 127 U. S. 411, 32 L. Ed. 229."

The limits of the powers of Congress in relation to the regulation of matters of local concern is well

stated in the case of *A. L. A. Schecter Poultry Corporation v. United States,* as follows:

> "Direct effects are illustrated by the Railroad cases we have cited as, e. g., the effect of failure to use prescribed safety appliances on railroads which are the highways of both interstate and intrastate commerce, injury to an employee engaged in interstate transportation by the negligence of an employee engaged in an intrastate movement, the fixing of rates for intrastate transportation which unjustly discriminate against interstate commerce. But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power.
>
> "If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the state over its domestic concerns would exist only by sufferance of the Federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to Federal control."

That was the unanimous opinion of this court. In the case of *Carter v. Carter Coal Company,* 298 U. S. 238, 80 L. Ed. 1160, which was likewise the unanimous opinion of this court as to the labor provisions of the Act there in question, this court said:

> "That commodities produced or manufactured within a state are intended to be sold or transported outside the state does not render their pro-

> duction or manufacture subject to federal regulation under the Commerce clause."

This language was used in the *Carter* case with reference to the application of the labor provisions of the Guffey Coal Act to the business of mining of coal, before commerce therein had begun. In the *Schecter* case it was applied with reference to the slaughter, sale and distribution of poultry after commerce therein had ended. In the *Carter* case this court said:

> "The Federal regulatory power ceases when interstate commercial intercourse ends; and, correlatively, the power does not attach until interstate commercial intercourse begins. There is no basis in law or reason for applying different rules to the two situations."

The Circuit Court of Appeals in the instant case said:

> "The analogy between the Shreveport case and the Santa Cruz Fruit Packing Co. is complete. In each the conduct of the intrastate business, the one as to its rates and the other as to its labor, affects the interstate business arising from the activities of the respective companies. In one this is accomplished by producing an *unfair rate* upon the commodities 'to be' transported, and in the other by throttling the interstate business in the commodities *'to be'* transported. In both the intrastate business puts 'in jeopardy' the proper and fair conduct of commerce among the states. The acceptance by the Supreme Court of the doctrine of the Shreveport case again demonstrates the overruling of the Carter case."

Upon numerous occasions when litigants have endeavored to get under the protecting wing of the Commerce Clause to escape state taxation or state regulation, this court has always separated the purely local business of production or manufacture from the interstate commerce which followed. It has done this for the purpose as announced in the case of *Lehigh Valley R. Co. v. Commonwealth of Pennsylvania* in order not to unduly hamper the powers of the states in the matters of state taxation and regulation. We submit that the same rules should be applied in distinguishing that which is intrastate from that which is interstate for the purpose of determining the extent of the regulatory powers of the Federal Government under the Commerce Clause. The boundary line between the two does not migrate back and forth depending on which government seeks to impose the restrictions or regulations.

In the case of *Veazie v. Moor,* 14 How. 568; 14 L. Ed. 545, the court declared:

> "Nor can it be properly concluded, that, because of the products of domestic enterprise in agriculture or manufacture, or in the arts, may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected is legitimately within the import of the phrase *foreign commerce,* or fairly implied in any investiture of the power to regulate such commerce. A pretension as far reaching as this would extend to contracts between citizen and citizen of the same state, would control the pursuits of the planter, the grazier, the manufacturer, the mech-

> anic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these allocations, the results of which may not become the subjects of foreign commerce, and be borne either by turnpikes, canals, or railroads, from point to point within the several states, towards an ultimate destination, like the one above mentioned."
>
> *Coe v. Errol,* 116 U. S. 517;
> *Kidd v. Pearson,* 128 U. S. 1; 32 L. Ed. 346.

In *Chassaniol v. Greenwood,* 291 U. S. 584; 78 L. Ed. 1004, this court, in reference to taxes levied by the State of Mississippi on cotton intended for shipment to other states, said:

> "But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce."

The distinction between mining, manufacturing, processing of producing articles intended for interstate commerce is a fact which cannot be overlooked by the court or changed by the legislative edicts of Congress. In the case of *Oliver Mining Company v. Lord,* 262 U. S. 172; 67 L. Ed. 929, the mining of the ore and its shipment in interstate commerce was almost a continuous process. Most of the ore was mined from open pits and was lifted directly from the ground into railroad cars and started on its interstate journey. Only a negligible percentage of the iron ore so mined remained in the state, yet the court said:

> "The ore does not enter interstate commerce until after the mining is done and the tax is im-

posed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does but this is not a forbidden burden or interference."

Heisler v. Thomas Colliery Company, 260 U. S. 245; 67 L. Ed. 237.

Other cases which recognize the distinction between that which is a local activity and that which is interstate commerce even though the movement is continuous are the cases of *East Ohio Gas Company v. Tax Commission,* 283 U. S. 465; 75 L. Ed. 1171, and *Utah Power and Light Company v. Pfost,* 286 U. S. 165; 76 L. Ed. 1038. In the gas case the gas was pumped at high pressure from the West Virginia gas fields to distribution centers in Ohio where the pressure was reduced to render the gas suitable for consumption. The movement of the gas from the fields in West Virginia to the burners used by the consumers in Ohio was continuous, yet the court was able to see and determine the distinction between the interstate movement of the gas and its local sale and distribution. The line of separation was recognized by the court in the following language:

"But when the gas passes from the distribution lines into the supply mains it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into many thou-

> sand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumers premises. So segregated the gas in such service lines and pipes remains in readiness or moves forward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, as shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail * * *
>
> "It follows that the furnishing of gas to consumers in Ohio municipalities by means of distribution plants to supply the gas suitable for the service for which it is intended is not interstate commerce but in business purely a local concern exclusively within the jurisdiction of the State."

In the gas company case the court was able to and did fix the line of separation between the commerce that was interstate and the distribution of the product that was purely local even though the movement from the gas fields to the consumer's premises was continuous. There the local activity commenced after the interstate transportation had ended. In the *Utah Power and Light Company* case the electric transmission lines were connected to the generating plant in Idaho and extended to the distribution centers in Utah. The consumer in Utah by turning his switch "set in operation the generating appliances in Idaho". The quantity of electricity produced in Idaho was controlled entirely by the demand of the consumers in Utah, there was no perceptible interval between manufacture, transmission and distribution. The

electricity taken from the revolving generators was transmitted to the ultimate consumer with the speed of light, yet this court recognized the distinction between the process of manufacture and the commerce which succeeded such manufacture in the following language:

> "In response to what is in effect an order, there is production as well as transmission of a definite supply of an article of trade. The manufacture to order of goods and their immediate shipment to the purchaser furnish a helpful analogy, notwithstanding the fact that there the successive steps from order to delivery are open to physical observation, while here the succession of events is chiefly a matter of inference—although inference which seems unavoidable. The process by which the mechanical energy of falling water is converted into electrical energy, despite its hidden character, is no less real than the conversion of wheat into flour at the mill. * * *
>
> "Without regard to the apparent continuity of the movement, Appellant, in effect, is engaged in two activities, not in one only. So far as it produces electrical energy in Idaho, its business is purely intrastate, subject to state taxation and control. In transmitting the product across the state line into Utah, Appellant is engaged in interstate commerce, and state legislation in respect thereof is subject to the paramount authority of the commerce clause in the Federal Constitution."

From the foregoing authorities we submit the conclusion is inescapable that petitioner's business of processing, labeling, packing, storing and loading its

product is entirely local in character and distinct from the transportation, sale, disposition and commerce in such product and it is immaterial whether a single case of such product or the whole thereof is ultimately destined for interstate commerce.

III.

THE CANNING BY PETITIONER OF THE SMALL QUANTITY OF HOMINY AND ITS SUBSEQUENT SALE ENTIRELY IN CALIFORNIA CAN HAVE NO MORE DIRECT EFFECT ON INTERSTATE COMMERCE IN THIS CASE THAN THE SLAUGHTERING OF CHICKENS HAD IN THE SCHECTER CASE AND SUCH PART OF PETITIONER'S BUSINESS IS GOVERNED BY THE RULE ANNOUNCED IN THAT CASE.

While the importation of hominy by petitioner is limited to a very small quantity and happens only during the short canning season, the quantity or the continuity of the flow is immaterial. All of the product is sold to Stokely Bros. (R. 689-690) for sale to local trade. Any argument that this activity brings petitioner within the purview of the National Labor Relations Act is fully answered by this court in the *Schecter* case, as follows:

> "The mere fact that there may be a constant flow of commodities into a state does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the state and is then held solely for local disposition and use. So far as the poultry here in question is concerned, the flow in interstate commerce has ceased."

In the case of *East Ohio Gas Company v. Tax Commission of Ohio,* 283 U. S. 465, 75 L. Ed. 1171, where the movement of the gas from the gas fields of West Virginia to the cities in Ohio was continuous, this court held that interstate commerce in the gas ended when the pressure was reduced and the stream divided into many small streams for distribution to the consumers. This ruling permitted the Tax Commission to tax the gas. A similar decision was made by this court in the case of *Public Utilities Commission v. Landon,* 249 U. S. 236, 63 L. Ed. 577, which permitted the State Utilities Commission to regulate the rates at which the gas so imported must be sold.

In the case of *Industrial Association v. United States,* 268 U. S. 64, 69 L. Ed. 849, wherein the Association was charged with conspiring to violate the Anti-Trust Act, the court said:

> "Interference with interstate trade was neither desired or intended. On the contrary, the desire and intention was to avoid any such interference, and to this end, the selection of materials subject to the permit system was substantially confined to California production. The thing aimed at and sought to be attained was not restraint of the interstate sale or shipment of commodities, was a purely local matter; mainly, regulation of building operations within a limited local area, so as to prevent their domination by the labor unions. * * * The process went no further than to take away the latter's (building contractors) opportunity to use, and therefore, his incentive to purchase. The effect upon, and interference with, interstate trade, if any, were clearly inci-

dental, indirect and remote,—precisely such an interference as this court dealt with in *United States Workers v. Coronado Coal Company,* supra, and *United Leather Workers International Union v. Herkert & M. Trunk Company,* 265 U. S. 457, 68 L. Ed. 1104."

IV.

THE POWER OF CONGRESS TO REGULATE LABOR DISPUTES IN A LOCAL INDUSTRY CANNOT BE MADE TO DEPEND ON THE INTENTION OF THE PRODUCER TO SELL THE PRODUCT IN INTERSTATE COMMERCE OR THE UNCERTAIN CIRCUMSTANCE OF WHETHER HE MAY SO SELL ALL OR ANY PART OF SUCH PRODUCT.

In the case of *Kidd v. Pearson,* 128 U. S. 1; 32 L. Ed. 346, Kidd claimed the right to manufacture intoxicating liquors in the State of Iowa although such manufacture was prohibited, except for certain purposes not involved therein, by the laws of the state on the ground that he intended to ship the entire output of his plant in interstate commerce and dispose of it in other states. This court disposed of his intention in the following language:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature than that between manufacture and commerce. Manufacture is transformation—the fashioning of raw material into a change of form for use. The functions of commerce are different. The buying and selling and transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional

sense embraces the regulation at least of such transportation. The legal definition of the term as given by this Court in *County of Mobile v. Kimball,* 102 U. S. 691, 702, is as follows: 'Commerce with foreign nations and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining * * * in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the northwest, and the cotton planter of the south, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests * * * interests which in their nature are, and must be, local in all the details of their successful management."

See also *Champlin Refining Co. v. Corporation Commission,* 286 U. S. 210; 76 L. Ed. 1062; *Federal Com-*

press and W. Co. v. McLean, 291 U. S. 17; 78 L. Ed. 622; *Oliver Mining Company v. Lord,* 262 U. S. 172; 67 L. Ed. 929; *Chassaniol v. Greenwood,* supra; *Heisler v. Thomas Colliery Company,* supra; *Carter v. Carter Coal Company,* supra; *Arkadelphia Milling Company v. St. Louis S. W. R. Co.,* 249 U. S. 134.

The intention or even the certainty that a part or all of petitioner's product will eventually be sold and disposed of in other states or in foreign nations is entirely immaterial. The matter has been decided so many times by this court that reference to it seems almost presumptuous, yet in view of the attempt made by Congress in the National Labor Relations Act to expand the powers of the Federal Government by what it calls *findings of fact and policy* and by definitions we desire to refer to the emphatic language of this court on some previous occasions. In the *Heisler* case the court said:

> "Whether any statute or action of a state impinges upon interstate commerce depends upon the statute or action, not upon what is said about it or the motive which impelled it; and a tax upon articles in one state that are destined for use in another state cannot be called a regulation of interstate commerce, whether imposed in a certainty of a return from a monopoly existing, or in the doubt and chances because of competition. The action of the state, as a regulation of interstate commerce, does not depend upon the degree of interference; it is illegal in any degree.
>
> "We may, therefore, disregard the adventitious considerations referred to and their confusion, and, by so doing we can estimate the contention

made. It is that products of a state that have, or are destined to have, a market in other states, are subject of interstate commerce, though they have not moved from the place of their production or preparation.

"The reach and consequences of the contention repell its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a state, determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coal, as they lie in the ground. The result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the south, the wheat of the west and its meats, the cotton of the south, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production and growth; that is, the fruits unpicked, the cotton ungathered, hides and flesh of cattle yet 'on the hoof', wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production.

"* * * Ingenuity and imagination have been exercised heretofore upon a like contention. * * * to express it, as the Court (Coe v. Errol) did, 'there must be a point of time when they (goods) cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation; and

> that moment seems to us to be a legitimate one for this purpose in which they commence their final movement for transportation from the state of their origin to that of their destination' ".

The fact that labor disputes in a local industry may diminish the amount of goods available for shipment in interstate commerce and may decrease the power of striking employees to purchase from outside the state goods to be transported in interstate commerce, and commerce may thereby be diminished, yet such results only indirectly affect commerce. The court recognized this in the Minnesota rate case (*Simpson v. Shepherd*), 230 U. S. 352, 57 L. Ed. 1511, where the court said:

> "The freedom of local trade may stimulate interstate commerce, while restricted measures within the police power of the state enacted exclusively with respect to internal business, as distinguished from interstate traffic, may in their reflex or indirect influence diminish the latter and reduce the volumes of articles transported into or out of the state."

This court in discussing the Minnesota rate case and referring to *Kidd v. Pearson,* supra, and *Heisler v. Thomas Colliery Company,* supra, and the case of *Coronado Coal Company v. United Mine Workers,* 268 U. S. 295, 69 L. Ed. 963, in the *Schecter* case said:

> "The fact that there may be an indirect effect upon interstate commerce does not subject the parties to the Federal statute, notwithstanding its broad provisions."

The court in discussing this point in the *Carter* case said:

> "A consideration of the foregoing and of many cases which might be added to those already cited, render inescapable the conclusion that the effect of the labor provisions of the act, including those in respect of minimum wages, wage agreements, collective bargaining, and the Labor Board and its powers, primarily fall upon production and not upon commerce; and confirms the further resulting conclusion that production is a purely local activity. * * *
>
> "That the production of every commodity intended for interstate sale and transportation has some effect upon interstate commerce may be, if it has not already been, freely granted; and we are brought to the final and decisive inquiry, whether here that effect is direct, as the 'preamble' recites, or indirect. * * *
>
> "The wages are paid for the doing of local work. Working conditions are obviously local conditions. The employees are not engaged in or about commerce, but exclusively in producing a commodity. And the controversies and evils, which it is the object of the act to regulate and minimize, are local controversies and evils affecting local work undertaken to accomplish that local result. Such effect as they may have upon commerce however extensive it may be, is secondary and indirect. An increase in the greatness of the effect adds to its importance. It does not alter its character."

V.

THE DESIGNATION OF PETITIONER'S PRODUCT AS "HOT CARGO" BY THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AS A RESULT OF THE LABOR DISPUTE IN QUESTION AND THE REFUSAL OF MEMBERS OF SUCH ASSOCIATION TO HANDLE SUCH PRODUCT WAS AN UNLAWFUL CONSPIRACY UNDER THE ANTI-TRUST ACT, (ACT OF JULY 2, 1890, CH. 647, 26 STAT., AT L. 209), AND LIKEWISE A VIOLATION OF THE SLOSS ARBITRATION AWARD, AND CANNOT BE A BASIS FOR EXTENDING THE POWERS OF CONGRESS OVER PETITIONER'S LOCAL LABOR RELATIONS SO AS TO DEPRIVE PETITIONER OF ITS CONSTITUTIONAL RIGHT TO TERMINATE ITS LABOR CONTRACTS WITH ANY GROUP OF ITS EMPLOYEES.

The Board found (R. 76):

> "The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned foods from the cars prior to their unloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members of the sister union, I. L. A. 38-79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move 'hot' Santa Cruz cargo were those members of the sailors who comprised the crews of steam schooners and whose duties include the handling of cargo."

That these acts which the Board found caused the burden or obstruction to interstate and foreign com-

merce in petitioner's merchandise to *be* transported and which the court below decided brought this case within the rule announced in the *Shreveport* case was an unlawful conspiracy on the part of the members of that association and their sympathizers is settled by the decisions of this court in the following cases:

Anderson v. Ship Owners' Association, 272 U. S. 359, 71 L. Ed. 298;

Bedford Cut Stone Co. v. Journeymen S. C. Assn., 274 U. S. 37, 71 L. Ed. 916;

Duplex Printing Press Company v. Deering, 254 U. S. 443, 65 L. Ed. 349;

Coronado Coal Co. v. United Mine Workers of America, 268 U. S. 295, 69 L. Ed. 963;

Lowe v. Lawlor, (Danbury Hatters' Case), 208 U. S. 274, 52 L. Ed. 488;

Local 167 I. B. T. v. United States, 291 U. S. 293, 78 L. Ed. 804.

In the instant case, the carriers, including the railroads, trucking companies and steamship lines, were ready and willing to handle petitioner's product. Had they conspired among themselves to obstruct commerce in such product by refusing to transport it, it would have been an unlawful conspiracy, such as this court condemned in the *Anderson* case, supra, wherein it said:

> "If the restraint thus imposed had related to the carriage of goods in interstate and foreign commerce—that is to say, if each shipowner had precluded himself from making any contract of transportation directly with the shipper, and

had put himself under an obligation to refuse to carry for any person without the previous approval of the Associations—the unlawful restraint would be clear."

Is it any the less an unlawful restraint because the employees of such carriers acting through their various unions and associations refuse to handle petitioner's merchandise? Is it any the less an unlawful conspiracy because brought about by the edict of a labor union which has set up a super-government within the United States through which it claims the right to determine what merchandise shall be transported in commerce and what shall not be so transported? The answer to these questions was given by this court in the *Bedford Cut Stone Company* case, supra, wherein the union by designating the plaintiff's product as "unfair" prevented its members from working on such product (stone). This court said:

> "Whatever may be said as to the motives of the respondents or their general right to combine for the purpose of redressing alleged grievances of fellow craftsmen or protecting themselves or their organization, the present combination deliberately adopted a course of conduct which directly and substantially curtailed, or threatened thus to curtail, the natural flow in interstate commerce of a very large proportion of the building limestone production of the entire country, to the gravely probable disadvantage of producers, purchasers and the public; and it must be held to be a combination in undue and unreasonable restraint of such commerce within the meaning

of the Anti-Trust Act as interpreted by this Court."

The other cases cited above are to the same effect, and we refrain from discussing them because it would be an unnecessary repetition, but, we submit, that if the labor dispute between petitioner and its employees had any effect on commerce; the effect was indirect and remote as held in the *Carter* case, supra. If commerce in the commodities *to be* transported was throttled as found by the court below, we submit, the unlawful conspiracy was the proximate cause of such throttling of commerce, and the labor dispute between petitioner and its employees was only a remote and indirect cause thereof.

VI.

THE INSTANT CASE IS IN NO WAY COMPARABLE TO THE CASES WHEREIN THIS COURT HAS UPHELD THE RIGHT OF CONGRESS TO REGULATE INTRASTATE AFFAIRS BECAUSE OF THEIR DIRECT EFFECTS UPON INTERSTATE COMMERCE.

We will discuss in this part of this brief the several classes of cases wherein this court has upheld the power of Congress over local affairs because of their effect upon interstate commerce.

(1) Rate Cases.

The Circuit Court of Appeals in the instant case held that the power of Congress under the commerce clause extended to the regulation of the labor relations

between petitioner and its employees, because 39 per cent of its product is intended for shipment in interstate and foreign commerce, because the effect of the labor dispute herein was to throttle the interstate business in the commodities to be transported. It said:

> "The analogy between the Shreveport case and the Santa Cruz Fruit Packing Co. is complete. In each the conduct of the intrastate business, the one as to its rates and the other as to its labor, affects the interstate business arising from the activities of the respective companies. In one this is accomplished by producing an unfair rate upon the commodities 'to be' transported, and in the other by throttling the interstate business in the commodities 'to be' transported. In both the intrastate business puts 'in jeopardy' the proper and fair conduct of the commerce among the states. The acceptance by the Supreme Court of the doctrine of the Shreveport case again demonstrates the overruling of the Carter case."

We submit that neither the *Shreveport* case (*Houston E. & W. T. R. Co. v. United States,* 234 U. S. 342, 58 L. Ed. 1341), nor any of the other rate cases, (*Florida v. United States,* 282 U. S. 194; 75 L. Ed. 291; *Railroad Commission v. Chicago B. & Q. R. Co.,* 257 U. S. 563; 66 L. Ed. 371) wherein this court has upheld the right of the Interstate Commerce Commission to prescribe intrastate rates because of their direct effect on interstate transportation of commodities, has any bearing upon the question herein involved for the reason that in each of those cases the court found that the lower intrastate rates discrim-

inated against interstate commerce. In the *Shreveport* case the court found:

> "The rates on these lines from Dallas and Houston, respectively, eastward to intermediate points in Texas, were much less, according to distance, than from Shreveport westward to the same points. It is undisputed that the difference was substantial, and injuriously affected the commerce of Shreveport. It appeared, for example, that a rate of 60 cents carried first-class traffic a distance of 160 miles to the eastward from Dallas, while the same rate would carry the same class of traffic only 55 miles into Texas from Shreveport. The first-class rate from Houston to Lufkin, Texas, 118.2 miles, was 50 cents per 100 pounds, while the rate from Shreveport to the same point, 112.5 miles was 69 cents. The rate on wagons from Dallas to Marshall, Texas, 147.7 miles, was 36.8 cents, and from Shreveport to Marshall, 42 miles, 56 cents. The rate on furniture from Dallas to Longview, Texas, 124 miles, was 24.8 cents, and that from Shreveport to Longview, 65.7 miles, was 35 cents. These instances of differences in rates are merely illustrative; they serve to indicate the character of the rate adjustment."

It is apparent that the discrimination in rates in the *Shreveport* case had the same direct effect on interstate commerce as the taxation had in the cases of *Brown v. Maryland,* 12 Wheat. 419, 6 L. Ed. 678, and *McCall v. People of the State of California,* 136 U. S. 104, 34 L. Ed. 391.

Similar discrimination with similar direct effects were found in the *Florida* case. In the *Chicago B. &*

Q. R. Co. case the court found that the lowering of the intrastate rates by the State of Wisconsin had the effect of materially increasing the revenue from the sale of tickets of the railroad from points immediately inside the state while decreasing the revenue from the sale of tickets from points immediately outside the state, thereby discriminating against such points.

Board of Trade and Stockyards Cases.

As we pointed out in our discussion under point I, this court found in the *Jones Laughlin,* the *Fruehauf Trailer Company* and *Friedman-Harry Marks* cases, supra, interstate movement of raw materials preceded manufacture and interstate movement of the manufactured articles followed such manufacture. In the *Board of Trade* cases (*Board of Trade v. Olsen,* 262 U. S. 1, 67 L. Ed. 839; and *Hill v. Wallace,* 259 U. S. 44, 66 L. Ed. 822) interstate commerce and traffic in the wheat commenced in the western states, concentrated in Chicago where the Board of Trade was located and wherein a change of ownership took place, and then continued on to eastern milling centers or seaboard points. It was the manipulation of the market for futures on the Chicago Board of Trade which the court found affected the country-wide price of the wheat, and directly affected the commerce therein. It was the constantly recurring practices of the Board of Trade that the Acts there in question sought to regulate.

In the *Stockyards* cases, (*Swift and Company v. United States,* 196 U. S. 375, 49 L. Ed. 518; *Stafford*

v. Wallace, 258 U. S. 495, 66 L. Ed. 735; *Tagg Bros. & Moorehead v. United States,* 280 U. S. 420, 74 L. Ed. 524) the movement in interstate commerce of the cattle and sheep began in the western states, halted at the stockyards where a change of ownership took place, and continued on to the eastern states where they were fattened or slaughtered. It was the practices at the stockyards that the Acts there in question sought to regulate. The facts showed that such practices had the effect of speeding up or retarding the flow of commerce, and consequently had a direct effect upon interstate commerce.

Railway Appliance, Employer's Liability and Railway Labor Cases.

In the case of *Southern Railway Company v. United States,* 222 U. S. 20; 56 L. Ed. 72, this court upheld the Safety Appliance Act as applied to locomotives and cars used in interstate railroads, even though the cars were at the time being used only for intrastate traffic. This court held that the absence of appropriate safety appliances on any part of a train is a menace not only to that train but to others, and upheld the Act as having a direct effect on interstate commerce. That was true because the locomotives and cars were capable of moving and did move in trains carrying interstate shipments, but suppose the Act had been applied to a narrow gauge intrastate railroad where the vehicles were incapable of being used on the broad gauge tracks used in interstate traffic, would this court or any other have upheld the Act merely because a break-down on the intrastate railroad would delay

or even prevent merchandise intended for interstate shipment from reaching the interstate carrier. We submit, that would be a case parallel to the instant case.

In the case of *Baltimore & O. R. Co. v. Interstate Commerce Commission,* 221 U. S. 612; 55 L. Ed. 878, and in *Mondou v. New York N. H. & H. R. Co.,* 223 U. S. 1; 56 L. Ed. 327, this court had under consideration the Hours of Service Act and the Employers' Liability Acts respectively. In the *Baltimore and Ohio Railroad* case the court found the hours of service worked by railway employees engaged in interstate traffic had a direct bearing upon the safety of that traffic. In the *Mondou* case (Second Employer's Liability case) this court held that the powers of Congress over the facilities of interstate commerce being plenary, it could make the carrier liable for compensation irrespective of negligence. We submit these cases are not in any way comparable to the instant case.

In the Railway labor cases (*Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks,* 281 U. S. 548; 74 L. Ed. 1034, and *Virginia R. Co. v. System Federation No. 40,* 300 U. S. 515; 81 L. Ed. 789), the labor regulations under consideration involved employees engaged in work having a direct bearing upon interstate commerce, in the one case, the clerks who did the clerical work necessary to the handling of interstate commerce, in the other, the shop crews who repaired the railroad equipment and appliances used in interstate commerce. We submit that those cases are entirely different from the instant case where the employees

in question had no connection with commerce, but were concerned only with the local activity of producing a marketable product, only a minor part of which was ever intended for sale in interstate or foreign commerce.

The Anti-Trust Cases

While in the cases of *Standard Oil Company v. United States,* 21 U. S. 1; 55 L. Ed. 619, and *United States v. American Tobacco Company,* 221 U. S. 106; 55 L. Ed. 663, the monopolistic schemes condemned included control of production, as well as manufacture, transportation and trade, the purpose of the unlawful combination was the control of trade. The control of production and manufacture were parts of the unlawful scheme, and as the schemes or combinations were condemned as a whole, the successive steps or parts fell under the ban of the Act. As in the conspiracy cases heretofore discussed, it was the purpose and the intent as well as the effect of the successive acts which brought the local activities within the control of Congress. In the case of *Addyston Pipe and Steel Company v. United States,* 175 U. S. 211; 44 L. Ed. 136, the six companies involved, by contracts between themselves as to bidding on jobs and the allocation of territory, controlled the prices at which steel pipe could be sold in practically all parts of the United States. While the sales of pipe in that case were local sales, the conspiracy extended to many states and it was the conspiracy which was condemned under the Anti-Trust Act. We submit that these cases like the conspiracy cases have no application to the instant case.

CONCLUSION.

Where there is no conspiracy or monopolistic practice involved, and no antecedent movement of raw materials in commerce, and the processing or manufacture involves products which are produced wholly within the state wherein manufacture or processing takes place, or if, as in the instant case, raw products are imported from other states for manufacture and processing but such materials have come to rest and are a part of the general mass of property within this State before such manufacture or processing takes place, such manufacture and processing are local activities and labor disputes therein affect only indirectly the subsequent commerce in such products, and Congress has no power to impose regulations governing labor disputes in such manufacturing or processing business, and therefore, the National Labor Relations Board had no jurisdiction over the labor dispute involved in the instant case. We submit the decisions of the Circuit Court of Appeals and of the Labor Board herein should be reversed.

Respectfully submitted,

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PAGE

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	6
Conclusion	15

CITATIONS

Cases:	
Beman et al. v. *Iowa Mfg. Co.*, 90 F. (2d) 249	7
Bowen et al. v. *James Vernor Co.*, 89 F. (2d) 968	7
Carter v. *Carter Coal Co.*, 298 U. S. 238	10
General Motors Corp. v. *Bajork et al.*, 90 F. (2d) 248	7
Industrial Association v. *United States*, 268 U. S. 64	14
Jeffery-DeWitt Insulator Co. v. *National Labor Relations Board*, 91 F. (2d) 134, certiorari denied, No. 368, October Term 1937	7
Lyons et al. v. *Eagle-Picher Lead Mining Co.*, 90 F. (2d) 321	7, 15
Minnesota Rate Cases, 230 U. S. 352	12
National Labor Relations Board v. *Bell Oil & Gas Co.*, 91 F. (2d) 509	7, 15
National Labor Relations Board v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58	6, 8
National Labor Relations Board v. *Fruehauf Trailer Co.*, 301 U. S. 49	6
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1	6, 9, 10, 11, 14
Pennsylvania R. R. v. *Clark Brothers Coal Co.*, 238 U. S. 456	8
Pratt et al. v. *Oberman & Co.*, 89 F. (2d) 786	7
Renown Stove Co. v. *National Labor Relations Board*, 90 F. (2d) 1017	7
Shreveport Case, 234 U. S. 342	12
Southern Ry. Co. v. *United States*, 222 U. S. 20	13
Virginian Ry. Co. v. *System Federation No. 40*, 300 U. S. 557	8, 11
Wilson & Co. v. *Gates et al.*, 90 F. (2d) 247	7
Statute:	
National Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq*	2
Sec. 2	5
Sec. 7	5
Sec. 8	2, 5
Sec. 10 (e)	2, 5

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PAGE

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion in the court below (R. 104–117) is reported in 91 F. (2d) 790. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 55–83) are reported in 1 N. L. R. B. 454.

JURISDICTION

The decree of the court below (R. 138–141) was entered on July 31, 1937. The petition for a writ of certiorari was filed on October 28, 1937, and was

served on November 4, 1937. The jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether the National Labor Relations Act may validly be applied to the employees of a California cannery which derives the bulk of its fruit and vegetables from within the State of California and ships a very substantial proportion, but less than 50 per cent, of its product in interstate and foreign commerce.

STATUTE INVOLVED

The provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*), are set forth in the appendix to the petition and supporting brief, pp. i–xix.

STATEMENT

Pursuant to charges (R. 1–5) duly filed by Weighers, Warehousemen and Cereal Workers Local 38–44, International Longshoremen's Association, a labor organization (R. 79), the National Labor Relations Board, by its Regional Director at San Francisco, California, issued its complaint on November 2, 1935, alleging that petitioner had engaged in certain unfair labor practices prohibited by Sections 8 (1) and 8 (3) of the National

Labor Relations Act (R. 5–12). Petitioner filed its answer on November 8, 1935 (R. 14–20), which, by subsequent stipulation (R. 149), was deemed to apply to an amended complaint issued on November 14, 1935 (R. 20–28).

A hearing was held at Oakland, California on December 23 and 24, 1935, and on January 2, 3, and 6, 1936, before a trial examiner designated by the Board. At the outset, petitioner moved to dismiss the complaint on constitutional and other grounds (R. 145–146). This motion was denied (R. 149–150). Petitioner thereafter participated in the hearing to the extent of cross-examining witnesses called by the Board, but adduced no evidence in its own behalf. Full opportunity to examine and cross-examine witnesses and to adduce evidence was afforded all parties. At the close of the Board's case, respondent moved to dismiss on the basis of its original motion, on the ground that the evidence affirmatively showed that petitioner was not engaged in interstate or foreign commerce, and on other grounds not material here (R. 757–758). This motion was denied (R. 33–34). On January 30, 1936, the trial examiner filed an intermediate report finding that respondent was engaged in interstate and foreign commerce and that it had committed the unfair labor practices alleged (R. 30–48). Exceptions to this report were thereafter filed with the Board (R. 48–55).

On April 2, 1936, the Board issued its decision sustaining the trial examiner's rulings and setting forth its findings of fact, conclusions of law, and order (R. 55–83). In substance, the Board found:

Petitioner is a California corporation operating fruit and vegetable canneries at Oakland and Seabright, California, and is among the four or five largest concerns in the industry in California. The bulk of the agricultural commodities packed at the Oakland plant are grown in California. In 1935 respondent canned and packed approximately 1,700,000 cases of fruits and vegetables, of which approximately 37 per cent (or 627,000 cases) were shipped in interstate and foreign commerce, 51 per cent were shipped to points within the State of California, and 12 per cent remained unsold.[1] There is a constant stream of loading and shipping of products out of respondent's plant throughout the entire year, approximately 3,000 to 4,000 cases being loaded daily by petitioner's warehouse employees into overland trucks and freight cars, and, in the case of shipment by boat, into trucks for transportation to the docks (R. 60–62).

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[1] The Circuit Court of Appeals seemed to assume that 39% of petitioner's products were shipped in interstate or foreign commerce (R. 106). The Board found that approximately 37% of the total production was so shipped (R. 61), and a simple computation from the above figures indicates that 42% of the amount actually sold in 1935 was so shipped. These discrepancies, of course, are not material.

With respect to the unfair labor practices alleged in the complaint, the Board found that respondent locked out and discharged 31 men, its entire force of warehousemen, because they organized and joined a labor organization, thereby discriminating against its employees in order to discourage membership in that organization and interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act (R. 63–75). These acts have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof (R. 75–77). The Board concluded that petitioner had engaged in unfair labor practices affecting commerce, within the meaning of Sections 8 (1) and 8 (3), and Sections 2 (6) and 2 (7) of the Act (R. 79–80).

Upon the basis of these findings, the Board ordered petitioner to cease and desist from further interference and discrimination, to reinstate with back pay the 31 employees discriminatorily discharged, and to post appropriate notices (R. 80–83).

On January 4, 1937, the Board filed in the court below its petition for the enforcement of this order, pursuant to Section 10 (e) of the Act (R. 93–101). On July 31, 1937, the court rendered an opinion upholding the Board's order as to all of respondent's employees at the Oakland plant (R.